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No. 86-1686

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

FORD MOTOR COMPANY,
Petitioner,
v.
KATHY ANDERSEN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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The Chamber of Commerce of the United States ("the Chamber") hereby moves, pursuant to Rule 36.1 of the Rules of this Court, for leave to file the attached brief *amicus curiae* in support of the petition for writ of certiorari. Consent to the filing of this brief has been obtained from counsel for petitioner and counsel for respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.[1] Counsel for the individual respondents has refused consent.

The Chamber, a non-profit membership organization, is the nation's largest federation of businesses, with a membership of more than 180,000 corporations, partnerships, and proprietorships, as well as several thousand trade associations and state and

[1] Copies of the consent letters have been filed with the Clerk of the Court.

local chambers of commerce. An important aspect of the Chamber's activities is presenting its members' views on labor relations matters before all branches of the federal government. Toward that end, the Chamber has filed *amicus curiae* briefs in this Court in a number of labor relations cases.

Many of the Chamber's members are parties to collective bargaining agreements, and the issue presented by this case potentially affects every employer who is a party to such an agreement. Accordingly, the Chamber is peculiarly able to present to the Court the views of the business community on the issues presented in this case and offers a potentially broader perspective than that provided by the parties before the Court.

The case before the Court raises significant issues concerning the preemptive scope of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and, more fundamentally, the very scope of the collective bargaining relationship. The Eighth Circuit's very narrow view of these issues ignored the prior holdings of this Court and the fundamental underpinnings of the national labor policy. Uncertainty in labor relationships and inconsistency from state to state are necessary results of its decision. However, the major consequence of the decision below will be a substantial weakening of the arbitration process, because the Eighth Circuit has made circumvention of that process an easy task. As a result, the Chamber requests permission to submit its views on these important issues.

WHEREFORE, the Chamber respectfully requests that its Motion be granted.

Respectfully submitted,

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INTEREST OF THE AMICUS

The Chamber of Commerce of the United States ("the Chamber") respectfully refers the Court to the description of its interest presented in its Motion for Leave to File Brief to which this brief is attached.

REASONS FOR GRANTING THE WRIT

In holding that state tort and contract claims brought by bargaining-unit employees challenging their layoffs are not preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, the Eighth Circuit has threatened the continued vitality of grievance and arbitration procedures under collective bargaining agreements. In the process, it has brought itself into

conflict with decisions of this Court and decisions of other circuits on the preemption issue, it has ignored this Court's holdings concerning the relationship between "individual" contracts and collective bargaining agreements, and it has created a mechanism by which virtually every employee dissatisfied with an action of his employer may bypass the arbitration procedure and present his grievance to a judge and jury.

I

THE ISSUE PRESENTED IN THIS CASE IS A FREQUENTLY RECURRING ONE THAT REQUIRES RESOLUTION BY THIS COURT

As the Petition for Certiorari ably demonstrates, the circuits are hopelessly confused on the question of whether Section 301 preempts state tort and contract claims based upon representations relating to the terms and conditions of employment allegedly "independent" of the collective bargaining agreement. Pet. at 21-27. In fact, the court below expressly recognized that its decision was in conflict with the Ninth Circuit's decision in *Bale* v. *General Tel. Co.*, 795 F.2d 775 (9th Cir. 1986), yet stated that "we do not agree with the court in *Bale* that adjudication of these state-law claims requires any significant reference to the terms of the collective bargaining agreement." Pet. App. at 11a-12a.[2] Consequently, held the court, respondents' action was not preempted under this Court's decision in *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985).

Lower courts need guidance from this Court on the issue presented in this case. As one district judge in the Eleventh Circuit noted with some understatement upon observing not only the intercircuit conflict on this issue but also the conflict within his own circuit, "[T]he cases on such issues play across the

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[2] The court did note that *Bale* was distinguishable from the case before it since the plaintiffs in *Bale* had brought a Section 301 claim concurrent with their state-law claims. However, to the extent that the court viewed the issue as one of election of remedies, it was in error. If Section 301 preempts the state-law claims at issue—as it does—it does so without regard to whatever other claims an employee may bring.

keyboard without full harmony." *Darden* v. *United States Steel Corp.*, 124 L.R.R.M. 2688, 2692 (N.D.Ala. 1987). Had the judge foregone the understatement, he would have said that, rather than merely lacking full harmony, the cases are wholly discordant, producing a cacophony of conflicting sounds that require resolution by this Court.

The issue presented in this case is not one that will go away. State courts are becoming increasingly protective of the job security of non-union employees, as, of course, they are entitled to do. *See* Lopatka, *The Emerging Law of Wrongful Discharge — A Quadrennial Assessment of the Labor Law Issue of the 80's*, 40 Bus. Law. 1 (1984). However, because of the breadth of the state-court remedies — including damages for emotional distress as well as punitive damages — bargaining-unit employees are often not satisfied with the traditional remedies of reinstatement and backpay available through the grievance process. Thus, "[t]o escape th[e] exclusivity [of grievance and arbitration procedures], employees frequently attempt to avoid federal law by basing their complaint on state law, disclaiming any reliance on the provisions of the collective bargaining agreement." *Olguin* v. *Inspiration Consolidated Copper Co.*, 740 F.2d 1468, 1472 (9th Cir. 1984). As the Petition for Certiorari shows, most courts have looked behind the facile assertion that the claims are based on "separate" contracts. Pet. at 26 and n.9. However, several courts, including the court below, have refused to restrict bargaining-unit employees to the remedies established by the collective bargaining agreement. *See, e.g., Malia* v. *RCA Corp.*, 794 F.2d 909 (3d Cir. 1986), petition for cert. filed, No. 86-990 (Dec. 15, 1986); *Caterpillar Inc.* v. *Williams*, 786 F.2d 928 (9th Cir.), *cert. granted*, 107 S.Ct. 455 (1986); *Varnum* v. *Nu-Car Carriers, Inc.*, 804 F.2d 638 (11th Cir. 1986), *cert. denied*, 55 U.S.L.W. 3772 (May 18, 1987). This Court should resolve the conflict by making clear that bargaining-unit employees must pursue their claims under the grievance procedure of the labor agreement.

II

THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT CONCERNING THE NATURE OF THE COLLECTIVE BARGAINING AGREEMENT AND PREEMPTION UNDER SECTION 301.

The Eighth Circuit committed two fundamental errors in reaching its conclusion that the claims at issue were not preempted. First, it erred in concluding that evaluation of respondents' claims will not "require extensive interpretation of the terms of the labor agreement." Pet. App. at 8a. As the Petition for Certiorari establishes, consultation of the collective bargaining agreement is necessary to make such determinations as whether the alleged misrepresentations were material and whether reliance on the alleged misrepresentation was reasonable. Pet. at 17-18. Consequently, this Court's decision in *Lueck, supra*, mandates that the claims be held preempted.

More fundamentally, however, the court misunderstood the teachings of this Court concerning the nature of collective bargaining agreements. The court concluded that respondents' claims of permanent-status employment were not preempted because they were based upon promises "separate from the collective bargaining agreement." Pet. App. at 9a. How did the court reach that conclusion? It did so simply by looking at the complaint and determining that as a matter of *fact* the complaint did not *purport* to be based upon the collective bargaining agreement, despite the fact that the complaint made repeated reference to that agreement. *See* Pet. at 14. Its analysis was faulty, however, in its failure properly to analyze whether as a matter of *law* the claims *must*, if they were to survive, be based on the collective bargaining agreement.

This Court's opinions make clear two propositions ignored by the Eighth Circuit. First, the collective bargaining agreement is more than a mere contract, all of the terms of which are embodied in the written agreement. It is a comprehensive constitution covering employer-employee relations that governs "the whole employment relationship," *United Steelworkers of America*

v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 579 (1960), rather than simply one of many coequal contractual arrangements governing the terms and conditions of employment of bargaining-unit members. In addition to the written agreement itself, the parties are also bound by the "common law of the shop," *id.* at 580, which is made up of policies, customs, past practices, and arbitration decisions. Thus, it is error to say that a claim is not based on the collective bargaining agreement merely because there is no claim that any express written provision of the agreement has been violated.[3]

The second proposition ignored by the Eighth Circuit is that "individual contracts" between employers and bargaining-unit employees are generally invalid. In *J.I. Case Co.* v. *NLRB*, 321 U.S. 332, 337 (1944), this Court established that individual contracts may not be used "to limit or condition the terms of the collective agreement." Although the Court acknowledged that it was "not called upon to state that under no circumstances can an individual enforce an agreement more advantageous than a collective agreement," it noted that "[t]he practice and philosophy of collective bargaining looks with suspicion on such individual advantages." *Id.* at 338-339. Instead, stated the Court, "individual advantages or favors will generally in practice go in as a contribution to the collective result." *Id.* at 339.

Rather than following the teachings of *J.I. Case*, the Eighth Circuit issued an opinion that is in direct conflict with it. In what has to be an unprecedented decision, it held that individual contracts are valid *even if they are inconsistent with the collective bargaining agreement.* It stated: "[W]e do not think that because Ford had the right to displace appellants under the terms of the collective bargaining agreement, the company also had the right . . . to avoid contractual or quasi-contractual obligations based on pre-employment promises."[4] Pet. App. at 10a. In reaching its

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[3]In fact, as noted at pages 12-14, *infra*, claims such as those of respondents can be pursued through arbitration.

[4]The court mistakenly relied upon *Belknap, Inc.* v. *Hale*, 463 U.S. 491 (1983), in reaching that conclusion. In *Belknap*, the plaintiffs were strike replacements who had been offered permanent work but were

amazing conclusion, the Court of Appeals relied on the opinion of this Court in *J.I. Case* for the proposition that "an individual hiring agreement, the scope of which is separate and distinct from a collective bargaining agreement, can create legally enforceable rights and obligations." Pet. App. 9a-10a n.7. The quoted portion of the opinion is an unremarkable proposition in some circumstances, but in the Eighth Circuit opinion it begs the question. The question is whether the individual contracts have a "scope" that is "separate and distinct" from the labor agreement. The Eighth Circuit concluded that they did, finding "significant" the fact that the contracts were entered into prior to the employees' entry into the bargaining unit.[5] However, it is difficult to understand how the court could conclude that the "scope" of the individual contracts was "separate and distinct" from the collective bargaining agreement when they both covered the same subject — the right *vel non* to permanent-status employment. Given that the collective bargaining relationship governs "the whole relationship," an individual contract outlining the terms and conditions of employment cannot, except in the most unusual circumstances, have a scope that is separate and distinct from the collective bargaining agreement.

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replaced by strikers as part of a settlement. They brought a state-law contract action against their employer, and the employer contended that the contract claims were preempted by the National Labor Relations Act. This Court held that neither the preemption doctrine of *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), nor the preemption doctrine of *Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), barred the contract action. However, the doctrine of preemption under Section 301 was not even involved in the case, since the plaintiffs had at no time been members of the bargaining unit.

[5]Although the court found the timing of the contracts "significant," it is unclear whether it found their timing determinative. If the court believed the scope of the contracts to be separate because the independent contracts did not rely on the collective bargaining agreement, it is not readily apparent that it should make any difference when the contracts were entered into.

In sum, the view taken by the Eighth Circuit is wholly at odds with a proper understanding of the nature of the collective bargaining agreement. Rather than viewing the independent contracts as "subsidiary to the terms" of the collective bargaining agreement as required by *J.I. Case,* 321 U.S. at 336, the court elevated these contracts to a status coequal with — or even superior to — the collective bargaining agreement. Yet, this Court in *Lueck* held that "state law rights and obligations that do not exist independently of private agreements . . . are preempted by those agreements." 471 U.S. at 213. Respondents' contract claims plainly do not exist independent of private agreement, since they are alleged to be products of such agreement. As to the fraud claims, the Court of Appeals was of the view that "the standards for judging fraudulent misconduct [do not] derive from any contractually-established expectations of the parties." Pet. App. at 8a. Yet, to state a claim for fraud all that one need allege is a breach of contract and a intention at the time of contracting not to perform. Thus, if the contract claims do not survive, neither should the fraud claims, since to allow otherwise would, to paraphrase this Court in *Lueck,* "elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for [fraud]." 471 U.S. at 211.

III

THE COURT OF APPEALS' DECISION PERMITS VIRTUALLY EVERY DISPUTE BETWEEN EMPLOYER AND BARGAINING-UNIT EMPLOYEE TO BE CHARACTERIZED IN SUCH A WAY AS TO BYPASS THE ARBITRATION PROCEDURE OF THE COLLECTIVE BARGAINING AGREEMENT.

Although respondents will no doubt argue that the issue raised by the petition is in some way unusual and therefore undeserving of review by this Court, nothing could be further from the truth. The discussion above concerning the conflict in the circuits demonstrates that the issue presented by the petition is a frequently recurring one about which lower courts require guidance. Not only are there a number of cases with facts virtually identical to this case — that is, bargaining-unit employees claiming that

their layoff conflicted with prehire promises[6] — the breadth of the rule announced by the court below ensures that its analysis will apply in a broad range of fact situations, seriously undermining this Court's stated preference for resolution of such disputes through arbitration.

The national labor policy is built on the foundation of private dispute resolution.[7] As this Court has recognized, "[a]rbitration is the means of solving the unforeseeable by molding a system of private law *for all the problems which may arise* and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties." *Warrior & Gulf*, 363 U.S. at 581 (emphasis added). If every dispute between employer and employee could be brought in court, the arbitrator, who now occupies a central role in the collective bargaining relationship, would be displaced altogether. In order to avoid a wholesale replacement of arbitration by state-law litigation, "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564, 566 (1960).

The reasoning of the Eighth Circuit would allow bargaining-unit employees to circumvent the arbitration procedure simply by pleading their grievance as based upon private individualized assurances rather than on provisions of the collective bargaining agreement. Respondents alleged that they had been assured of the following: 1) they would be "permanent, full-time employees" as that term was defined by the collective bargaining agreement; 2) they would not be laid off unless there was a slump in the

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[6]*See, e.g., Caterpillar Inc.* v. *Williams*, 786 F.2d 928 (9th Cir.), *cert. granted*, 107 S.Ct. 455 (1986); *Darden* v. *United States Steel Corp.*, 124 L.R.R.M. 2688 (N.D. Ala. 1987).

[7]Section 203(d) of the Labor Management Relations Act, 29 U.S.C. § 173(d), provides: "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

economy and in truck sales;[8] 3) they would not be laid off due to hiring of other former Ford employees from a preferential hiring list; and 4) the preferential hiring list had been exhausted. These contentions fall into three general categories that would also include any number of other allegations by disgruntled employees. The first claim falls into the category of contentions that the employee's classification under the collective bargaining agreement was misrepresented. The second and third claims are in the category of contentions that the employee had a side agreement with his employer outlining the terms and conditions of his employment that existed irrespective of the terms of the collective bargaining agreement. The fourth claim is in the category of contentions that an historical fact material to the terms and conditions of the employee's employment had been misrepresented. Contrary to the Court of Appeals' conclusion, all of these contentions could have been pursued through arbitration.[9]

The first category of wrong alleged by respondents — that the employer misrepresented their status under the collective bargaining agreement — would cover a vast variety of potential claims. For example:

> 1. A "Laborer B" making $7.00 per hour claims that he was told in his preemployment interview that he was going to be hired as a "Laborer A" at $8.00 per hour. He sues in state court for reclassification and back pay.[10]

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[8]Presumably, layoffs due to a reduction in the labor force caused by mechanization would also violate their contracts, notwithstanding anything that the collective bargaining agreement might say about management's rights to implement such changes and to control the size of its work force.

[9]It is important to emphasize that the issue is not *whether* the employee may pursue such claims, but rather *where* they should be pursued.

[10]Under the Eighth Circuit's view, it would be a matter of no consequence that the collective bargaining agreement expressly provided that all Laborers were to be hired as Laborer B's, just as in the instant case the collective bargaining agreement provided that all employees were to be hired as probationary employees subject to bumping.

2. A new employee assigned to the night shift claims that he was told prior to employment that he would be assigned to day shift. He sues in state court seeking transfer to the day shift and for emotional distress damages because of the strain that night work has put on his marriage.

Similarly, an assortment of allegations of the nature of respondents' second and third claims could be advanced — that is, that the employee had a "side agreement" concerning the terms and conditions of employment that was entirely divorced from the collective bargaining agreement. Unlike the prior example, which involves the issue of where within the collective bargaining agreement the employee is initially placed, this class of wrongs relates to promises allegedly made concerning the terms and conditions of employment without reference to the collective bargaining agreement. Thus, the employer is subject to two sets of possibly conflicting contractual obligations on the same subject. A broad variety of analogous state law claims could thus be brought:

1. An employee properly laid off under the collective bargaining agreement claims that when interviewed for the job, he was guaranteed employment for a minimum of ten years, even though the collective bargaining agreement provides that the employer retains the right to adjust the size of its work force at any time. *Darden* v. *United States Steel Corp.*, 124 L.R.R.M. 2688 (N.D. Ala. 1987) (held preempted).

2. An employee claims that he was told prior to hire that he would receive a wage increase after six months even though the collective bargaining agreement provides that employees are not eligible for such increases until they have been employed for one year.

3. An employee claims that prior to being hired he was advised that if he suffered work-related injuries he would receive full compensation during any period of total or partial disability. *Eitmann* v. *New Orleans Public Service, Inc.*, 730 F.2d 359 (5th Cir.), *cert. denied*, 469 U.S. 1018 (1984) (held preempted).

4. An employee claims that he was assured prior to being hired that he would be guaranteed 10 hours overtime per week

even though the collective bargaining agreement guarantees only 40 straight-time hours per week.

5. An employee claims that he was assured prior to being hired that he would not have to work overtime if he did not want to, even though the collective bargaining agreement expressly reserves management's right to require up to eight hours of overtime per week.

6. An employee claims that he was guaranteed that if the plant were shut down, he could transfer to another plant, even though the collective bargaining agreement specifies the consequences of a shutdown, which do not include transfer. *Caterpillar, Inc.* v. *Williams*, 786 F.2d 928 (9th Cir.), *cert. granted*, 107 S.Ct. 455 (1986) (Court of Appeals implied not preempted).

7. Employee claims that he was told that he would not be disciplined for tardiness if he were less than one hour late, even though the collective bargaining agreement specifies that any tardiness is grounds for discipline.

The Eighth Circuit's analysis would also permit state law claims that some historical fact was misrepresented during a pre-employment interview:

1. An employee laid off pursuant to the terms of a collective bargaining agreement due to a slump in business that preexisted his hire (or at least could have been forecasted prior to his hire) claims that he was told when hired that business was good and that he would not be laid off.

2. An employee who is not allowed to work the overtime that he wants contends that at the time he was hired he was falsely told that a major new order had come in and that he would therefore have the opportunity to work as much overtime as he wanted.

Just as in the instant case, each of the above-described hypotheticals can be characterized as not deriving from the collective bargaining agreement, but originating "solely in [state] common law." Fundamentally, what the Eighth Circuit opinion means is that virtually every action taken by an employer can be challenged under state law — even if wholly consistent with, *or*

even expressly authorized or required by, the collective bargaining agreement — if the employee contends that he was informed differently at the time of hire.

The Eighth Circuit's analysis appears to have been based at least in part on the erroneous view that none of the above examples would be subject to the grievance and arbitration procedure of the collective bargaining agreement because none involves a claim that any provision of the collective bargaining agreement was breached.[11] However, just as the court relied on a "crabbed reading" of *Lueck*, Pet. App. at 13a (Bright, J., dissenting), the court also relied on a crabbed interpretation of the scope of the collective bargaining relationship in general and the scope of the grievance and arbitration procedure in particular.

Arbitration decisions make clear that claims such as those of respondents are "grist for the arbitration mill." *Mason* v. *Continental Group, Inc.*, 763 F.2d 1219, 1224 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 863 (1986). Numerous arbitrators have entertained claims of the kind that respondents allege. For example, in *Armco, Inc.*, 79 L.A. 330 (1982) (Wren, Arb.), the Union filed a grievance on behalf of certain laid-off employees contending that the employees had been promised by a supervisor that upon their acceptance of a job at a different mine they would retain their seniority rather than obtaining a new seniority date as provided in the collective bargaining agreement. The arbitrator entertained the grievance, although he ultimately found that the Union had failed to prove the existence of the alleged promise. In any event, concluded the arbitrator, given the clarity and well-publicized nature of the portion of the collective bargaining agreement dealing with transfers, the grievants "would not have been entitled to rely on such a supposed promise." 79 L.A. at 333. Thus, the arbitrator not only accepted the proposition that promises by a supervisor could be enforced under the arbitration provision of the agreement, he also recognized — unlike the Eighth Circuit — the

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[11] An alternative reading of the court's reasoning is that although the claims may have been grievable, the grievance process was not exclusive. *See* Pet. App. at 12a ("appellants cannot be compelled to use the contract grievance procedure to settle their dispute with Ford").

need to consult the agreement to ascertain the reasonableness of any reliance by the employees on the promise.

In a similar case, the arbitrator entertained a grievance brought by an employee who claimed that he had been promised at the time of his hire that after successful completion of his probationary period, his wage rate would be raised to the top of the wage range established in the collective bargaining agreement for his classification. *Dempster Brothers, Inc.*, 69-1 Arb. (CCH) ¶ 8194 (1968) (Cantor, Arb.). Although the employer argued that since no breach of the provisions of the labor agreement was alleged, no proper grievance was involved, the arbitrator stated: "A specific agreement made with the employee would properly be a part of his employment under the general collective bargaining agreement and would be enforceable by grievance procedures." *Id.* at 3670. Of course, the Eighth Circuit view is to the contrary, since under its view the individual agreement was entirely separate from collective agreement.

Another arbitration case that the Eighth Circuit presumably would have found non-arbitrable is *U.S. Pipe & Foundry Co.*, 54 L.A. 820 (1970) (Jones, Arb.), in which the grievant, who had resigned from his employment, contended that he was entitled to vacation pay for unused vacation. After examining the collective bargaining agreement and determining that the grievant was not entitled to such payments under the contract, the arbitrator nonetheless ordered the company to make the payment because the grievant's supervisor had promised him that he was entitled to it. Importantly, the arbitrator acknowledged that his task of resolving the conflict between a correct interpretation of the labor agreement and the responsibility of the company for statements made by supervisors would have been much more difficult if enforcing the promise by the supervisor would have interfered with the rights of any other employees under the agreement. The Eighth Circuit, on the other hand, apparently views resolution of that conflict as a matter of state law, since it was perfectly content in the instant case to permit respondents' claims to go forward even though the remedy they were seeking was preferential seniority.

Notwithstanding the arbitrability of the above claims, the Eighth Circuit's decision permits employees to bypass the arbitration procedure and pursue their grievances under state law. Under the Eighth Circuit's analysis, all that is required to state a claim that will survive a motion to dismiss is to allege that although the employee's discharge did not violate the collective bargaining agreement, it did violate a private understanding that the employee and employer had reached in a pre-employment interview. Given that the claims are purportedly unrelated to the collective bargaining agreement, it would be purely a matter of state law how explicit the "promise" must be to be enforceable. In the ever-increasing number of states which recognize implied contracts of job security, few employees could not provide *some* evidence that could arguably support the implication of such a promise. In such a case, it would then be for a jury to decide whether such a promise could be implied. It is hard to imagine a situation that would be more disruptive to the collective bargaining relationship.

CONCLUSION

For the reasons set forth above and for the additional reasons advanced by petitioner, the petition should be granted.

Respectfully submitted,

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